

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD.

SPECIAL CIVIL APPLICATION No 288 of 1989

For Approval and Signature :

Hon'ble MR. JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the Judgment ?
  2. To be referred to the Reporter or not?
  3. Whether Their Lordships wish to see the fair copy of the Judgment ?
  4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge?

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ABDUL RAUF MOHMED UMAR SHETH  
VERSUS  
MIYAMOHMED USMANBHAI IDARIA

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Appearance:

MR UDAY P VYAS for MR BJ SHELAT for Petitioner  
MR SHAILESH PARIKH for MR HB SHAH for  
Respondents No.1, 2, 3 and 4  
MR VM PANCHOLI for Respondent No.5

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CORAM : MR JUSTICE S.K. KESHOTE  
Date of Decision : 16/06/2000

C.A.V.JUDGMENT

Heard the learned counsel for the parties.

2. Challenge has been made by the petitioner to the order of the State Government passed in revision application of the respondent No.1 to 4 under which the order of the Collector whereunder the land in dispute has been allotted to the petitioner under the category of Socially and Economically Backward Class persons was quashed and set aside.

3. In this special civil application, the State of Gujarat has not been impleaded as a party. It is really shocking that though order passed by the State Government dated 3-12-1998 on revision of the respondents No.1 to 4 has been challenged and prayer has been made for quashing and setting aside thereof, but as stated earlier, the State of Gujarat has not been impleaded as a party. In the absence of State of Gujarat as a party to this petition, the challenge made to the order passed by it and prayer made for quashing and setting aside thereof cannot be granted. Though only on this ground, this petition could have been dismissed, otherwise also, after hearing the learned counsel for the parties, I do not find any merits in this petition.

4. Learned counsel for the petitioner despite of repeatedly asking by the court has failed to show under which provisions of law, the land has been allotted to the petitioner. From the record of the special civil application, I find that the land has been allotted to the petitioner without following due procedure. This application of the petitioner for allotment of land after receipt thereof has to be put for calling of the objections from the residents of the area. That has not been done in this case. The grievance has been made by the respondent No.1 to 4 in the revision application that the petitioner was not eligible for allotment of the land as he has inherited the property of his father and further he possesses a shop. It has further been stated that the petitioner has failed to complete the construction on the land within the stipulated period. An objection has also been raised that necessary notice has not been given to the respondents. These points prevailed with the authorities, the State Government and the order of the Collector has been set aside. It is not correct to say on the part of the petitioner that only on the ground that sanad has not been issued in favour of the petitioner, the order of the Collector has been set aside by the State Government. The petitioner has not stated in the special civil application that what the respondents No.1 to 4 have stated against him

is incorrect. He has accepted the same by not denying the fact that he has inherited the property of his father and that he also possesses a shop. In the presence of these uncontroverted facts, I fail to see any justification in the order of the Collector allotting the land to the petitioner under the category of Socially and Economically Backward Class. The land should have been allotted only to those persons who are landless and not to those who are having inherited properties and having shops. This very purpose and object of allotting the land to the landless persons has been frustrated in this case. It is not unknown that real persons are not being granted the land but affluent persons are being benefitted by all these schemes etc..

5. Learned counsel for the petitioner in this case raised only contention that the revision application filed by the respondents NO.1 to 4 before the State Govt. was not maintainable. In support of this contention, the counsel for the petitioner placed reliance on certain decisions of this court. I find from one of the decisions that this ratio has been laid down that the Collector exercise the power of the State Government in the matter of allotment of land and as such its order could not have been taken in the revision by the State under section 211. But even if it is taken that the revision was not competent, I fail to see only on this ground how this order of the State Government can be interfered with and set aside. The very grant of allotment of the land in favour of the petitioner is not legal and in case the order of the State Government is set aside then what this court will do to restore an illegal order. It is no more res integra that sitting under Article 226 or 227 of the Constitution, this court will not perpetuate illegality where even if the order challenged in the special civil application is found to be without jurisdiction, the court will not set aside the same only on this ground as setting aside of the same will result in restoration of an illegal order. That what precisely will happen in case on the ground as raised by the learned counsel for the petitioner, the order of the State Government is set aside. Reference in this respect may have to the following decisions :

AIR 1966 SC 828 Venkateshwara Rao vs. Govt. of  
Andhra Pradesh

AIR 1980 RAJ 1 Jagan Singh vs. State Transport  
Appellate Tribunal, Rajasthan &  
Anr.

AIR 1968 KERALA 76 A M Mani vs. State Electricity  
Board

AIR 1977 PATNA 166 Devendra Prasad Gupta vs. State  
of Bihar & Ors.

AIR 1994 RAJ 53 Himmat Jain vs. State of  
Rajasthan

AIR 1990 PATNA 165 Chintamani Sharan Nath vs.  
State of Bihar

6. Another contention raised by the learned counsel for the petitioner is also equally devoid of any substance. It is true that now out of four respondents, three have filed an affidavit in favour of the petitioner but at this stage, it may not be difficult for the petitioner to procure this affidavit. Moreover, this court will not permit to stand an illegal order of the Collector merely because, now at this stage, the respondents No.1 to 4 have given an affidavit in favour of the petitioner. If such things are permitted then there may not be check on illegalities and black-marketing of the parties. The very fact that now these respondents have come up in favour of the petitioner goes to show that they have been given some consideration. Being the citizen of the country once the respondents NO.1 to 4 have made a complaint against the illegal order of the Collector, they may not be permitted to back out therefrom, more so, in the proceedings under Article 226 or 227 of the Constitution. Above that, the respondents No.1 to 4 have not given out that they are desirous of withdrawing the revision application. This court, otherwise also, once an illegal order has come to its notice, on this conduct of the respondents No.1 to 4 will not decide the matter in favour of the petitioner.

7. In the result, this special civil application fails and the same is dismissed. Rule discharged. Interim relief, if any, granted by this court stands vacated. The petitioner is directed to pay Rs.500/= as costs of this petition to the respondent No.2.

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